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October 28, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 5, 2005

Case Number: TSO-0180

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should be restored.

I. BACKGROUND

The Individual has been employed by a contractor at a DOE facility in a position which requires him to have an access authorization. In August 2000, the Individual was arrested for driving while intoxicated (DWI). DOE Exhibit (Ex.) 3.6. In April 2003, the Individual was involved in a traffic accident and admitted to having consumed alcohol at a point prior to the accident. DOE Ex. 3.5. In May 2003, the Individual received a criminal summons for leaving the scene of an accident. The Individual admitted to having consumed one glass of alcohol prior to that accident. DOE Ex. 3.4. In February 2004, the Individual was arrested for aggravated battery on a household member. The Individual stated that prior to the incident he had consumed some alcohol. DOE Ex. 3.3. During each of these incidents, the Individual held an access authorization.

In October 2000, June 2003, and November 2003, the Individual was interviewed by a personnel security specialist. Based on the results of the interviews and the incidents giving rise to the interviews, the Individual was referred to a DOE consultant-psychiatrist (the DOE Psychiatrist) for an evaluation. In March 2004, the DOE Psychiatrist interviewed the Individual and issued a report.

In his March 2004 report, the DOE Psychiatrist determined that the Individual met the criteria for Alcohol Abuse set forth in the Diagnostic and Statistical Manual, 4th Ed., Text Revision,

published by the American Psychiatric Association (the DSM-IV-TR). DOE Ex. 2.1 at 9.¹ The DOE Psychiatrist also determined that, as of the date of his report, there was not yet adequate evidence of rehabilitation or reformation. In determining what was necessary to adequately establish evidence of rehabilitation or reformation, the DOE Psychiatrist concluded that

I recommend outpatient treatment of moderate intensity for one year from the date of this evaluation. By moderate intensity I mean a treatment regimen such as Alcoholics Anonymous a few times per week, and should include maintenance of sobriety. [The Individual's] depressive disorder worsens the prognosis for maintenance of sobriety, and I recommend that his rehabilitation program also include ongoing psychotherapy and medication management, as determined by [the Individual] and his current psychiatrist. Duration of such treatments should be for a year to provide adequate evidence of rehabilitation and reformation.

Id at 13.

In August 2004, the DOE notified the Individual that his August 2000 DWI arrest, the April 2003 traffic accident, the May 2003 criminal summons for leaving the scene of an accident, the February 2004 arrest for battery, and the DOE Psychiatrist's diagnosis constituted derogatory information that created a substantial doubt as to the Individual's continued eligibility for an access authorization under 10 C.F.R. § 710.8(j) and (l).² (Criteria J and L). Notification Letter, August 30, 2004. Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual's Letter, September 15, 2004. The DOE forwarded the request to the Office of Hearings and Appeals (OHA). The OHA Director appointed me to serve as the hearing officer.

A hearing was held in this matter. At the hearing, the Individual was represented by counsel. The Individual offered his own testimony, as well as that of his son, his supervisor, and four current and former co-workers. The local DOE office presented one witness: the DOE Psychiatrist.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and

¹ The DOE Psychiatrist also determined that the Individual suffered from Major Depression, Recurrent, In Remission. The DOE Psychiatrist stated that, although he did not believe the depression indicated a significant defect in the Individual's judgment or reliability, the disorder could negatively affect the Individual's efforts at sobriety. DOE Ex. 2.1. The DOE Psychiatrist noted that the Individual appeared to have responded to antidepressant medications. *Id.* at 10.

² The Criterion L derogatory information also included two incidents where the Individual denied consuming alcohol or misled an official as to the extent of his alcohol consumption in connection with two of the arrests referenced above. Notification Letter, August 30, 2004.

would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In resolving questions about an individual’s eligibility for access authorization, I must consider relevant factors and circumstances connected with the individual’s conduct which are set forth in § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the individual’s age and maturity at the time of the conduct; the voluntariness of the individual’s participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 C.F.R Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual’s eligibility for access authorization. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b) (6). Once the DOE has presented derogatory information affecting an individual’s eligibility for access authorization, the individual must come forward with evidence to convince the DOE that restoring his or her access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. The DOE regulations were amended in 2001 to state that any doubt regarding an individual’s eligibility for access authorization shall be resolved in favor of the national security. 10 C.F.R. § 710.7(a).

III. THE HEARING

The Individual did not dispute the matters giving rise to the Notification Letter, i.e. the DWI arrest, the traffic accident, the summons for leaving the scene of an accident, the battery arrest, and the DOE Psychiatrist’s diagnosis. Instead, he testified that he has since stopped consuming alcohol, has maintained his medication regimen to control his depression, and is now reformed and rehabilitated. The following discussion highlights portions of the hearing testimony relevant to that contention.

A. The Individual

The Individual admitted that he was “in denial about [his] alcohol abuse and said things to [his] doctors to try to mask the problem.” Transcript (hereinafter “Tr.”) at 41. However, he stated that he always reported the alcohol-related incidents to the DOE in a timely manner. *Id.* at 41-42. The Individual testified that he had not consumed any alcohol since February 2004, with the exception of two beers in June 2004.³ *Id.* at 45, 51; *see also* Individual’s Ex. B, AA. The Individual testified that he took full responsibility for his actions and that he would not abuse alcohol again. Tr. at 42. The Individual stated that he has attended Alcoholics Anonymous (AA) meetings several times a week for well over a year. *Id.* at 56; *see also* Individual’s Ex. A.

³ The Individual has submitted monthly alcohol testing forms indicating negative results for alcohol from November 2004 through March 2005. Individual’s Ex. B.

He stated that he is committed to the program and “realized the huge mistake [he] was making and that alcohol was not going to fix any of [his] problems.” Tr. at 44. The Individual also stated that he had no desire to consume alcohol anymore and planned to remain with AA for the rest of his life. *Id.* at 58, 46. The Individual believed that he had adequate resources to prevent any relapse into alcohol abuse. He stated that he regularly attended AA meetings, actively worked with an AA sponsor, and confided in his son and his colleagues at work. *Id.* at 50, 60. Finally, the Individual was confident that he would remain abstinent from alcohol because he realized that alcohol worsened his depression rather than alleviating it and because he was committed to remaining with the AA program and helping others in the program. *Id.* at 59.

B. The Individual’s Sponsor

The Individual’s AA sponsor testified that he had been working closely with the Individual on the AA program. *Id.* at 82-83. He stated that the Individual has a support system in place consisting of the sponsor himself, AA group meetings, and other friends in AA. *Id.* at 88. The sponsor stated that the Individual had an “above-average” chance of maintaining his sobriety because the Individual had worked through the steps of the AA program and understood the program. *Id.* at 92-93. Regarding the Individual’s likelihood of relapsing into alcohol abuse, the sponsor stated that “[i]f [the Individual] stays in Alcoholics Anonymous, works with other alcoholics, continues to go to meetings, I don’t think he’ll ever relapse again. I think he’ll have permanent sobriety.” *Id.* at 99.

C. The Individual’s Son

The Individual’s son testified that he had not seen the Individual drink alcohol in “several years.” *Id.* at 131. He stated that AA made the Individual more aware of the consequences of drinking. *Id.* at 132. The Individual’s son noted that he and the Individual had become much closer in the past two years than they had ever been. *Id.* at 132-133. He stated that he and the Individual had taken several fishing trips, where alcohol was present, and that the Individual did not consume any alcohol. *Id.* at 133. He also noted that there was no alcohol in the Individual’s home. *Id.* at 136.

D. The Individual’s Supervisor

The Individual’s supervisor described the Individual as “an excellent employee.” *Id.* at 101. He stated that he “always felt [the Individual] was performing at a higher level than the other [employees] in the group.” *Id.* at 102. The supervisor stated that he never saw any problems with the Individual “relative to alcohol” and that he could not recall the Individual ever drinking alcohol in his presence. *Id.* at 102, 103. When asked whether he was familiar with the Individual’s efforts at rehabilitation, the supervisor stated that he was aware that the Individual was attending AA and that the Individual remained an effective employee. *Id.* at 104.

E. The Co-Workers

The Individual’s co-workers described the Individual as “hard-working,” “enthusiastic,” and “reliable.” *Id.* at 107, 118, 127. One of the co-workers stated that he did not recall ever seeing

the Individual drink alcohol. *Id.* at 108. Several of the co-workers expressed their belief that the Individual would not relapse. One co-worker stated that he believed the Individual had “put his [alcohol problem] behind him” and had “a different attitude towards things.” *Id.* at 111-112. Another co-worker stated that the Individual was “very strong-willed, and when he sets his mind to something, he’s always followed through.” *Id.* at 123. Another co-worker stated that the Individual was “following all the rules ... going through all the processes that you need to go through.” *Id.* at 127.

F. The DOE Psychiatrist

After hearing the testimony of the Individual and the other witnesses at the hearing, the Psychiatrist testified that the Individual had successfully addressed his alcohol problem. The DOE Psychiatrist noted that the Individual followed his recommendation by engaging in a treatment program for at least one year. *Id.* at 144-45. He stated that the fact that the Individual was honest about the slight relapse he had in June 2004, when he drank two beers, was a positive sign. *Id.* at 146. He was impressed by the fact that the Individual confronted the relapse and worked through it. *Id.* The DOE Psychiatrist also stated that, despite the relapse, the Individual had nevertheless maintained his sobriety for over a year. *Id.* The DOE Psychiatrist noted that the most positive indicator for continued sobriety would be the Individual’s continued participation in the AA meetings. *Id.* at 148.

IV. FINDINGS OF FACT AND ANALYSIS

The derogatory information concerning Criteria J and L centers on the Individual’s alcohol problem. Criterion J concerns conduct indicating that the Individual has “been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). Criterion L concerns conduct tending to show that the Individual was “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l).

It is beyond dispute that a diagnosis of alcohol abuse or dependence raises security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0243*, 27 DOE ¶ 82,808 (2002). The four alcohol-related incidents documented in the Notification Letter gave rise to security concerns regarding the Individual’s alcohol consumption and the Individual’s trustworthiness and reliability. Given the Individual’s well-documented problem with alcohol, the local security office had more than sufficient grounds to invoke Criterion J.

The arrests and incidents giving rise to the Criterion L concerns all involve the Individual’s problem with alcohol consumption. In this regard, I note the arrest for aggravated battery against a household member involved an incident where the Individual and the battered woman had a couple of glasses of wine each.⁴ Tr. at 38; Ex. 2-1 at 4-5. The arrests and the other Criterion L

⁴ The woman involved in this incident submitted a notarized statement in which she characterized the battery incident as a “misunderstanding” triggered by a difficult period in their relationship. Individual’s Ex. AB. She goes

incidents do raise serious security concerns regarding his reliability associated with his pattern of excessive alcohol consumption.

The Individual does not dispute that he had an alcohol problem. Rather, in an attempt to mitigate the Criteria J and L concerns, he maintains that he is now rehabilitated from his alcohol problem.

The hearing testimony and the documents strongly support the Individual's assertion that he has successfully addressed his alcohol problem. The Individual testified that he had abstained from consuming alcohol for well over a year. *See* Tr. at 45, 51. That testimony was corroborated by the Individual's son, *see id.* at 131, and several witnesses who stated they could not recall the Individual ever drinking in their presence, *see id.* at 103, 107. *See also* Individual's Ex. B, AA. The Individual has also demonstrated that he is committed to maintaining his abstinence from alcohol and has adequate support and resources to help him do so. *See, e.g., id.* at 50, 58, 60, 88, 136.

The DOE Psychiatrist agreed that the Individual has successfully addressed his alcohol problem. The DOE Psychiatrist was present for the entire hearing. After the Individual and the other witnesses testified, the DOE Psychiatrist testified that "[the Individual] has been working his program well for a year, which is what I recommended as a requirement for demonstrating adequate evidence of rehabilitation and reformation." *Id.* at 144-45. He stated that he was confident in concluding that the Individual had demonstrated adequate evidence of rehabilitation. *Id.* at 147. The DOE Psychiatrist agreed with the Individual's AA sponsor that the Individual's chance of relapsing was low. *Id.* at 158; *see also id.* at 99. Regarding the Criterion L concern, the Individual's trustworthiness and reliability, the DOE Psychiatrist noted that each of the incidents giving rise to the concern was intertwined with the Individual's alcohol problem. He stated that he did not believe the Individual suffered from some character defect that made him inherently unreliable. *Id.* at 155-56. Rather, he stated that "if you removed the alcohol, there wouldn't be probably the episode [the derogatory information referenced in the notification letter]" *Id.* at 156.

In sum, all the testimony at the hearing, including the testimony of the DOE Psychiatrist, convinces me that the Individual has successfully addressed his alcohol problem. Accordingly, I find that the Individual has demonstrated that he is reformed and rehabilitated from his alcohol problem. Consequently, I believe that the Individual has mitigated the security concerns raised by the Criterion J derogatory information. Because I find that the Criterion L concerns have their basis in the Individual's problems with alcohol, I find that the security concerns raised by the Criterion L derogatory information have also been mitigated.

on to recommend that the Individual's security clearance be restored stating that she would do "whatever is deemed necessary to help this wonderful person [the Individual] that was always there to help me." *Id.* at 1.

V. CONCLUSION

The Individual has resolved the Criteria J and L concerns cited in the Notification Letter. Therefore, I conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: October 28, 2005